

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

28294

FILE: B-213900

DATE: May 22, 1984

MATTER OF: Silvaseed Company

DIGEST:

The award of government contracts by formal advertising must be made on the same terms that were offered to all bidders by the invitation. Although inconsequential or immaterial defects or variations that do not affect price, quantity or quality may be waived, an irregularity in a bid resulting in benefits to a bidder not extended to all bidders by the invitation renders the bid nonresponsive.

The Silvaseed Company (Silvaseed) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. R6-3-84-4s, issued by the Forest Service for the production of containerized tree seedlings. The protest is denied.

When bids were opened on November 28, 1983, the contracting officer discovered that Silvaseed's bid contained the following notation on the Schedule of Items section:

"[NOTE: BOXES REMAIN PROPERTY OF SILVASEED COMPANY TO BE PICKED UP FROM DELIVERED LOCATIONS AT SILVASEED EXPENSE WHEN OUTPLANTING COMPLETED]"

The contracting officer determined that the notation was an impermissible qualification of the Silvaseed bid and rejected the bid as nonresponsive. Silvaseed contends that the qualification of its bid was not prohibited by the IFB and that it is frequently the practice on this type of contract to have empty seedling boxes returned to the contractor. Silvaseed also argues that award to Silvaseed with this provision still would be most advantageous to the government since its bid was \$7,306 lower than the next low bid while the value of the boxes is only \$1,376.

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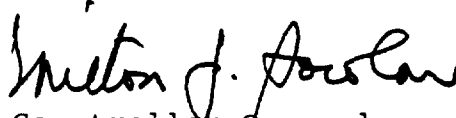
We have consistently taken the position that the award of government contracts pursuant to the rules of formal advertising must be made on the same terms that were offered to all bidders by the invitation. Com Tran of Michigan Inc., B-200845(1), November 28, 1980, 80-2 CPD 407. An irregularity in a bid resulting in benefits to a bidder not extended to all bidders by the invitation renders the bid nonresponsive. B-171424, March 1, 1971.

An award on the basis of Silvaseed's bid as submitted would result in a contract under which Silvaseed would retain ownership of the shipping boxes. According to Silvaseed, the boxes have a value of \$1,376. The invitation did not extend this benefit to bidders. Therefore, Silvaseed's bid is nonresponsive. B-171424, id. A bid must be rejected as nonresponsive where the bidder imposes conditions which limit the rights of the government so as to give the bidder an advantage over other bidders. Kari-Vac Inc., B-194202, July 3, 1979, 79-2 CPD 4.

While an agency must either waive or afford the bidder an opportunity to cure a minor informality or irregularity which pertains to some immaterial or inconsequential defect or variation from the IFB, WFT Service Corp., B-206603, August 31, 1982, 82-2 CPD 190, a variation in a bid that imposes on the government liability that the government did not intend to assume is a material variation and is not waivable. B-171424, supra. Under a contract with Silvaseed, the Forest Service would be obligated to keep the empty shipping boxes and make them available for return to Silvaseed. This leaves open the possibility that the Forest Service would be liable if some boxes were destroyed, misplaced or otherwise not recovered by Silvaseed.

With respect to Silvaseed's contention that award to the next low bidder would result in additional cost, we have long held that the importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the government might realize monetary savings in a particular procurement by accepting a nonresponsive bid. Data Controls/North Inc.--Request for Reconsideration, B-205726.2, August 16, 1982, 82-2 CPD 131.

The protest is denied.

for 
Comptroller General
of the United States